

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

KENNETH DOST, et al,

3:11-CV-270-ST

Plaintiffs,

ORDER

v.

NORTHWEST TRUSTEE SERVICES, INC.,  
et al,

Defendants.

HERNANDEZ, District Judge:

The Honorable Janice M. Stewart referred a Findings and Recommendation (“F&R”) (doc. #118) to me on December 21, 2011. The F&R recommends that the motions to dismiss (doc. #10, #22, #24, #29, #33, and #107) filed by defendants Northwest Trustee Services, Inc. (“NWTS”), Bank of America Corporation (“BAC”) and Merrill Lynch & Co. (“Merrill Lynch”), Larry Blake Litton, Jr. (“Litton”), Litton Loan Servicing, LP (“Litton Loan Servicing”), Goldman Sachs & Company (“Goldman Sachs”), and Mortgage Electronic Registration Systems

(“MERS”), respectively, be granted.<sup>1</sup>

After the F&R was filed, Plaintiff Kenneth Dost, appearing pro se on behalf of himself, his wife Michele Dost, and his now defunct company, KWD Design, Inc. (“KWD”), filed timely objections to Magistrate Judge Stewart’s F&R. Plaintiff’s objections included what this court construes as a motion for leave to amend the First Amended Complaint (doc. #120) and a motion to appoint counsel (doc. #120). Defendants Litton, Litton Loan Servicing, and Goldman Sachs filed a timely response to Plaintiff’s objections.

On January 25, 2012, Plaintiff filed a notice of voluntary dismissal (doc. #123) pursuant to Rule 41(a)(1)(i) of the Federal Rules of Civil Procedure (“Rule”).<sup>2</sup> Magistrate Judge Stewart referred Plaintiff’s notice of voluntary dismissal to me on January 25, 2012. None of the Defendants filed a response to Plaintiff’s notice of voluntary dismissal.

Rule 41(a) allows a “plaintiff [to] dismiss an action without a court order by filing . . . (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment; or (ii) a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A)(i). “Unless the notice or stipulation states otherwise, the dismissal is without prejudice. But if the plaintiff previously dismissed any federal-or state-court action based on or including the same claim, a notice of dismissal operates as an adjudication on the merits.” Fed. R. Civ. P. 41(a)(1)(B).

Although Plaintiff filed his Rule 41(a)(1) voluntary dismissal after Magistrate Judge

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<sup>1</sup> Only defendants Ownit Mortgage Solutions, Inc. (“Ownit”) and its CEO, William David Dallas (“Dallas”), chose not to file a motion to dismiss.

<sup>2</sup> Plaintiff improperly cites Rule 41(a)(1)(A)(i) as Rule 41(a)(1)(i).

Stewart had already issued her F&R, the record demonstrates defendants have not served their answers or motion for summary judgment and no stipulation of dismissal has been filed. In addition, defendants have not indicated that they object to Plaintiff's voluntary dismissal.

### **CONCLUSION**

Based on the circumstances above, this action is DISMISSED without prejudice, and in light of Plaintiff's notice of voluntary dismissal, Magistrate Judge Stewart's December 21, 2011, F&R (doc. #118) is VACATED.

IT IS SO ORDERED.

DATED this 22<sup>nd</sup> day of February, 2012.

/s/ Marco A. Hernandez  
Marco A. Hernandez  
United States District Judge